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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
MAYO III, WILLIAM H	
ART UNIT	**PAPER NUMBER**
2831	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/075,786	HOLLAND ET AL.	
	Examiner	Art Unit	
	William H. Mayo III	2831	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 May 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13 and 27-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13 and 27-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on May 27, 2005 has been entered.

Response to Amendment

2. The declaration under 37 CFR 1.132 filed May 27, 2005 is insufficient to overcome the rejection of claims 1-27 based upon 35 USC 103(a), as set forth in the last Office action because: While the applicant has stated that there was a long felt need for an anti-chafe cover, commercial success of the anti-chafe cover and that the differences in the price of Spectra® and Cordura® would not have made utilizing Specta® as an anti-chafe cover would not have been obvious because no one has ever done so, the examiner finds the statement unpersuasive. It is the examiner's position and the Board of Appeals position, that there exist a bona-fide prima facie case of obviousness, and that based on the teachings of the references (Andrieu and Holland),

it would have been it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective cover, which is made of polyester fibers, of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10) and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Based on the above arguments, a maintained rejection follows below.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-9 and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682, herein referred to as Holland). Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20). Specifically, with respect to claim 1, Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4), wherein the sleeve has open ends (left and right ends) and is formed of a fabric (10) made of substantially high strength yarn (11, i.e. polyester, Col 3, lines 8-12). With respect to claim 2, Andrieu discloses that the fabric (11) is formed from at least 70 percent high strength yarns (i.e. 100 % polyester). With respect to claim 6, Andrieu discloses that the high strength yarn (11, i.e. polyester) is about 400 to 1000 denier (i.e. 600-2500, Col 3, lines 60-67). With respect to claim 7, Andrieu discloses that the fabric covering (10) has a warp and fill density of about 40 ends per inch (Col 4, lines 1-10). With respect to claim 8, Andrieu discloses that the sleeve (Fig 1) is formed as an elongated sheet having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4,

lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 9, Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47). With respect to claim 27, Andrieu discloses an abrasion resistant cable system (Fig 4) comprising a cable (not numbered) that is subject to being periodically moved across abrasion surfaces (Col 1, lines 12-20) and a protective sleeve (10) surrounding the cable, which is formed from a fabric made of substantially high performance yarn (i.e. polyester), has open ends (left and right ends), and protects the cable (Fig 4) from abrasion and wear thereof (Col 1, lines 12-20). With respect to claim 28, Andrieu discloses that the fabric (11) is formed from at least 70 percent high strength yarns (i.e. 100 % polyester). With respect to claim 32, Andrieu discloses that the high strength yarn (11, i.e. polyester) is about 400 to 1000 denier (i.e. 600-2500, Col 3, lines 60-67). With respect to claim 33, Andrieu discloses that the fabric covering (10) has a warp and fill density of about 40 ends per inch (Col 4, lines 1-10). With respect to claim 34, Andrieu discloses that the sleeve (Fig 1) is formed as an elongated sheet having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 35, Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47).

However, Andrieu doesn't necessarily disclose the protective cover being made of a high performance yarns having a tensile modulus equal to or greater than

150g/denier and a tenacity equal to or greater than 7 grams/denier, wherein the yarns are cut and tear resistant (claims 1 & 27), nor the protective cover being made of a material fabric having a weight of between of between about 5 & 8 ounces per square yard (claims 3 & 29), nor the fabric being resistant to petroleum based products (claims 4 & 30), nor the high strength yarn being selected from the group consisting of long chain polyethylenes, high strength aramids, liquid crystal polymers, and combinations thereof (claims 5 & 31), nor the fabric density of between about 30 and 36 inches per inch (claims 7 & 33).

Holland teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Specifically, with respect to claim 1, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier. With respect to claim 3, Holland teaches that the fibers may be used to form a fabric having a weight of between about 5 & 8 ounces per square yard (Col 2, lines 49-51) for the purpose of providing a fabric that is lightweight while also providing a sufficient strength and durability to withstand the use and environment to the fabric is exposed (Col 2, lines 51-56). With respect to claim 4, Holland teaches that the fabric formed of Spectra® fibers are chemical resistance to petroleum-based products (Col 4, lines 45-51). With respect to claim 5, Holland teaches that the fabric containing Spectra® fibers,

which are long chain extended polyethylene (Col 2, lines 25-30). With respect to claims 7, Holland teaches that the fabric may be constructed to have a warp and fill density of between 30 and 36 ends per inch (Col 2, lines 49-51). With respect to claim 27, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier. With respect to claim 29, Holland teaches that the fibers may be used to form a fabric having a weight of between about 5 & 8 ounces per square yard (Col 2, lines 49-51) for the purpose of providing a fabric that is lightweight while also providing a sufficient strength and durability to withstand the use and environment to the fabric is exposed (Col 2, lines 51-56). With respect to claim 30, Holland teaches that the fabric formed of Spectra® fibers are chemical resistance to petroleum-based products (Col 4, lines 45-51). With respect to claim 31, Holland teaches that the fabric containing Spectra® fibers, which are long chain extended polyethylene (Col 2, lines 25-30). With respect to claim 33, Holland teaches that the fabric may be constructed to have a warp and fill density of between 30 and 36 ends per inch (Col 2, lines 49-51).

With respect to claims 1-9 and 27-35, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective cover, which is made of polyester fibers, of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric

covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10) and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

6. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ratigan (Pat Num 5,441,790) in view of Holland et al (Pat Num 5,395,682). Ratigan discloses a protective cover (1) for use with a rope (Figs 1-4), and which is used in environments in which lengths of the rope are subject to abrasion (Col 1, lines 5-10). Specifically, with respect to claim 40, Ratigan discloses an abrasion resistant rope (5) of the type that is capable of periodically moved across abrasive surfaces (Col 1, lines 62-68) comprising a sleeve (Fig 1) surrounding a length of a rope (5), wherein the sleeve (Fig 1) is formed of a fabric (i.e. textile material) made of substantially high strength yarn (i.e. polyester fibers, Col 2, lines 1-3).

However, Ratigan doesn't necessarily disclose the protective cover being made of a high performance yarns having a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier, wherein the sleeve is cut resistant or cut resistant (claim 40).

Holland teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab

resistance, and is compatible with the environment (Col 1, lines 5-10). Specifically, with respect to claim 40, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier.

With respect to claim 40, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective cover, which is made of polyester fibers, of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10) and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claims 10-12 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682, herein referred to as modified Andrieu), as applied to claims 1 and 27 above, further in view of Kite, III et al (Pat Num 4,891,256, herein referred to as Kite). Modified Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20) as described

above. Specifically, with respect to claim 10, modified Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4). With respect to claim 11, modified Andrieu discloses that the sleeve (Fig 1) is formed having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 12, modified Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47). With respect to claim 36, modified Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4). With respect to claim 37, modified Andrieu discloses that the sleeve (Fig 1) is formed having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 38, modified Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47).

However, modified Andrieu doesn't necessarily disclose the sleeve being a plurality of bands comprising a short length of the fabric and being spaced apart along the length of the cable or hose (claims 10 & 36), nor each band having opposed

longitudinally edges including means for fastening the opposed longitudinally edges together around the length of the cable (claims 11 & 37).

Kite teaches a wraparound closure device (Figs 1-4) made of a fabric that protects elongated substrates, such as cables, from abrasion (Col 1, lines 5-10). Specifically, with respect to claims 10 & 36, Kite teaches a wraparound sleeve (10-Fig 3) that may be made of polyester (Col 4, line 49-50) and is formed as a plurality of bands (see three fabric sleeves not numbered) wherein each band comprises a short length of the fabric which are spaced apart along the length of the cable (Fig 3) for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). With respect to claims 11 & 37, Kite teaches that each short length of fabric (see 3 section of fabric, Fig 3) having opposed longitudinally edges (left and right sides of all three fabrics) wherein the opposed longitudinally edges has means (24, 30, & 32) for fastening the opposed longitudinally edges together around a length of the cable (Fig 3).

With respect to claims 10-11 & 36-37, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the polyester protective cover of modified Andrieu to comprise a multiple protective covers as taught by the Kite because Kite teaches that such a fabric configuration protects elongated articles from abrasion (Col 4, lines 5-8) and provides effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45) and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. (*St. Regis Paper Co v. Bemis Co., 193 USPQ 8).*

8. Claims 13 & 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682, herein referred to as modified Andrieu), as applied to claims 1 and 27 above, further in view of Holt et al (Pat Num 5,070,597, herein referred to as Holt). Modified Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20) as detailed above with reference to claims 1 & 27.

However, modified Andrieu doesn't necessarily disclose the protective cover further comprising a hood made of the same fabric and fastened to at least one end of the sleeve for protecting the exposed end of the cable or hose (claims 13 & 39).

Holt teaches a double wall protective cover (Figs 1-19b) comprising flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), for the purpose of providing environmental protection, including electrical protection, and joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21). Specifically, with respect to claims 13 & 39, Holt discloses that the protective cover (Figs 1-19b) may be formed of polyester (Col 7, line 36) and as a hood (i.e. end cap, 19, Figs 6a-d), wherein the hood (19) may be fastened to at least one end of the cable or pipe (22) for protecting the exposed end of the cable or pipe (22, Col 29, lines 23-24).

With respect to claims 13 & 39, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the cable or pipe assembly of modified Andrieu to comprise a end cap protective cover formed of

fabric as taught by the Holt because Holt teaches that fabrics, having excellent flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), are commonly used to protect cables and pipes are sometimes formed as end cap cover configuration that provides environmental protection, including electrical protection for the joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21) and also provides protection for the exposed ends of cables or pipes (Col 29, lines 23-24).

Response to Arguments

9. For reiteration purposes, the rebuttals to the Applicant's arguments filed July 03, 2003 are stated below.

Specifically, the Applicant's arguments filed July 03, 2003 have been fully considered but they are not persuasive. The applicant argues:

A) The prior art is different because Andrieu doesn't describe how or why fabric formed from inexpensive polyester yarns could possibly be deemed abrasion resistant nor does Andrieu recognizes or solves the problems addressed by the present invention.

B) Kite is directed to a wraparound closure device and doesn't employ or suggest high performance yarns to form abrasion resistant, cut resistant, and tear resistant protective covers.

C) Holt doesn't in any way or shape form a fabric and cover of the claimed invention.

D) The examiner has failed to justify the proposed modification to the primary reference Andrieu because there is no scintilla of motivation or suggestion that would prompt one of ordinary skill in the art to combine Holland with Andrieu and therefore the combination of the references is improper.

E) The examiner has not established a prima facie case of obviousness and therefore the combination of the references is improper.

F) The examiner is incorrect to state the polyester fibers are high performance yarns, because the examiner has pointed to nothing that would suggest that polyester is a high performance yarn.

G) Holland is a cargo cover and not a cover for hoses or hoses.

H) Andrieu teaches against utilizing the material of Holland because Andrieu specifically states that the cover is to be inexpensive and modifying the cover of Andrieu with the material of Holland would defeat the objectives of Andrieu.

I) There is not motivation to combine Andrieu with Kite and the examiner has not explained how one of ordinary skill in the art would be motivated to do so.

J) The examiner is piecing together references without any explanation and therefore the combination of Andrieu with Holt is improper as there would be no need to protect the ends of such cables because the end would likely seriously interfere with the operation of the connected cable.

With respect to arguments A, D, E, & H, the examiner respectfully traverses. Andrieu clearly recognizes the problem of wires and cables needing abrasion and weather protection as claimed. Specifically, Andrieu clearly discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4), may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20). While it has been admitted on the record that Andrieu doesn't necessary disclose the material being cut resistant or tear resistant, or being expensive, the courts have long held that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In this case, Holland clearly teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of prior art polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Andrieu clearly teaches a protective cover for cables that may be made of polyester for protecting against weather

elements (i.e. heat) and that is abrasion resistant as explained above. Holland clearly teaches a protective cover that is that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of prior art polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Clearly, both Andrieu and Holland are concerned with the protective covers providing abrasion and weather resistant as disclose above in the rejection. While Holland, states that the protective cover may be used with cargo container, Holland clearly teaches that the protective cover can also be utilized in other applications, where the protection of interior components by a cover having the properties of abrasion and weather resistance is needed (see Col 3, lines 18-24). Therefore, there clearly does exist a motivation to modify the polyester protective cover of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), such as the polyester protective cover of Andrieu, and has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10). Clearly as taught by Holland, a protective cover made of Spectra fibers not only fulfils the stated purposes of Andrieu (i.e. abrasion and weather resistant) but also teaches why such a protective cover is more superior that protective covers made of polyester materials, such as the protective cover of Andrieu. Based on the teaching of Holland, it

has also been held that to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Secondly, there clearly exist a reasonable expectation of success, since both Holland and Andrieu both teach protective covers that are utilized for some of the same purposes (i.e. abrasion and weather protection). Thirdly, the combination of Andrieu and Holland discloses all of the claimed invention. Therefore, all three basic criteria for establishing a prima facie case of obviousness have been met. In light of the above comments, the examiner submits that the combination of Andrieu and Holland is proper and just.

With respect to arguments B & I, the examiner respectfully traverses. Firstly, as stated above in the rejection, Kite clearly teaches a prior art wraparound closure device (Figs 1-4) made of a polyester fabric that protects elongated substrates, such as cables, from abrasion (Col 1, lines 5-10) as Andrieu also teaches. However, Kite is relied on for it's teaching of a wraparound sleeve (10-Fig 3) being formed as a plurality of bands (see three fabric sleeves not numbered) wherein each band comprises a short length of the fabric which are spaced apart along the length of the cable (Fig 3) for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). Specifically, it has been stated that modified Andrieu doesn't necessarily disclose the sleeve being a plurality of bands comprising a short length of the fabric and being spaced apart along the length of the cable or hose (claims 10 & 23), nor each band having opposed longitudinally edges including means for fastening the opposed longitudinally edges together around the length of the cable (claims 11 & 24), however

Kite teaches that such a cable wrap configuration is well known for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). The applicant admits in the Background of Invention section, that the configuration taught by Kite, is commonly utilized in protective covers. Specifically, the applicant states:

> **"That protective covers formed of a plurality of bands of short length fabric providing abrasion resistant properties and being spaced apart along the length of the cable or hose are commonly utilized (see Page 1 of applicant's spec, lines 18-21).**

However, the examiner has relied on Kite for providing a factual teaching that a plurality of bands of short length fabric utilized for providing abrasion resistant properties and being spaced apart along the length of the cable or hose are commonly utilized in the cable art to allow multiple sections or points of the cable or hose section to breakout (i.e. separated) from the bundle to being routed in a different direction (see Col 1 of Kite, lines 38-50). Therefore, not only has the applicant admitted that such a configuration is well known, Kite clearly teaches an abrasion resistant prior art protective cover made of polyester and having a plurality of bands is well known. In light of the above, there clearly exist a motivation to modify the protective cover of modified Andrieu to comprise a multiple protective covers as taught by applicant own admission of prior art and as taught by Kite because Kite teaches that such a well known fabric configuration protects elongated articles from abrasion (Col 4, lines 5-8) and provides effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). Secondly,

there exist a reasonable amount of success, since such a modification is commonly made to protective covers as disclosed by applicant own admission of prior art and Kite. Thirdly, all of the claim limitations are taught by the combination and therefore, all three basic criteria for establishing a prima facie case of obviousness have been met. In light of the above comments, the examiner submits that the combination of Andrieu, Holland, and Kite is proper and just.

With respect to argument C & J, the examiner respectfully traverses. It is also known in the art of cables and hoses, that once a cable or hose is manufactured to a specified length, that the cable or hose is cut, thereby leaving the interior, such as conductors and insulation, exposed on the two cut ends. In order to protect the exposed interior components of the cable or hose on the cut ends, a protective hood is commonly utilized. While the examiner has stated the above, the examiner has relied on Holt for providing a factual teaching that providing exposed ends with protective covers that have excellent flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), are commonly utilized to protect exposed ends of cables and pipes (Col 29, lines 23-24) for providing environmental protection, including electrical protection for the joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21). Therefore, clearly there exist a motivation to combine the teaches of modified Andrieu and Holt, exist a reasonable amount of success since they both deal with cable or hose applications, and all of the claimed structure is disclosed by the combination of the references. While the applicant is correct in stating that once a cable is in the field and connected to a termination point there would be no need for a

protective cover, that also applies to the claimed invention. An end cap cannot be placed on the end of a cable (prior art's or applicant's claimed invention) if the cable is connected. This statement is further verified by applicant's disclosure (see Page 6 of applicant spec, lines 23-25), which states that the protective hood (i.e. end cap) is only utilized "when the cable or hose is not in use". In light of the above comments, the examiner respectfully submits that the criteria for establishing a prima facie case of obviousness has been met and therefore the combination of modified Andrieu and Holt is proper and just.

With respect to argument F, the examiner respectfully traverses. Firstly, it is the duty of an examiner to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Given the above stated guideline, the examiner should refer to the specification to determine what constitute a "high performance yarn". In the specification, the applicant identifies a high strength yarn as being a high performance yarn. Specifically, under the heading "Summary of the Invention", lines 5-10, the applicant states

> **"The protective cover is constructed from a woven fabric formed primarily from high strength (high performance) yarns."**

Given the broadest interpretation, it appears that the applicant is trying to stated that high performance yarns are high strength yarns. Clearly polyester certainly is a high strength material as it is commonly employed as an abrasion resistant material.

Therefore, given the broadest interpretation, the examiner states that polyester is a high strength material, i.e. high performance material.

With respect to argument G, the examiner respectfully traverses. While the applicant is correct in stating that Holland teaches that the protective cover may be used with cargo container, the applicant cannot ignore the other teachings of Holland. Specifically, Holland clearly teaches that the protective cover can also be utilized in other applications, where the protection of interior components by a cover having the properties of abrasion and weather resistance is needed (see Col 3, lines 18-24). Andrieu clearly teaches an application in which a cable is protected by a cover in which the properties of abrasion and weather resistance are needed. Therefore, Holland clearly teaches that its protective cover can be utilized in an environment as disclose Andrieu and not just cargo covers.

Conclusion

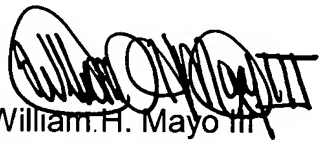
10. This action is non-final.

Communication

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Mayo III whose telephone number is (571)-272-1978. The examiner can normally be reached on M-F 8:30am-6:00 pm (alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William H. Mayo III
Primary Examiner
Art Unit 2831

WHM III
June 10, 2005